

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-01-2007

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THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.17265 of 2006

And

M.P.Nos.2 and 3 of 2006

S.Abeeb Raja

.. Petitioner

Vs.

1. Directorate General of Health
Services, through its Assistant
Director General Medical Examination
Cell, Nirmal Bhavan,
New Delhi.

2. The Central Bureau of Investigation,
through its Superintendent of Police,
Anti Corruption Wing,
Shastri Bhavan,
Haddows Road,
Chennai.

3. Madras Medical College,
through its Dean,
Poonamallee High Road,
Chennai.

4. The Director of Medical Education,
Poonamallee High Road,
Kilpauk,
Chennai.

.. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Memorandum No.U.12021/7/2005 - MEC dated 2.6.2006 and quash the same.

For Petitioner : Mr.Vijay Narayan,
Senior Counsel for
Ms.P.Suganthi.

For Respondent-1 : Mr.V.T.Gopalan,
Addl. Solicitor General
for Mr.S.Udayakumar,
Senior Central Govt.
Standing Counsel.

For Respondent-2 : Mr.N.Chandrasekaran

For Respondents-3&4 : Mr.Pa.Kadhirvel,
Govt. Advocate (Education)

ORDER

The petitioner appeared in the All India Post Graduate Medical Entrance Examination for admission to MD/MS Courses for the year 2006 on 8.1.2006 and was declared to have secured 117th rank in the said examination, when the results were declared on 14.2.2006. By a memorandum dated 21.4.2006, issued by the first respondent, the petitioner was informed of his selection for admission to MS (General Surgery) Course under the All India Quota to the Madras Medical College. The petitioner joined the course in the third respondent-College on 27.4.2006.

2. However, in pursuance of the petitioner being implicated as one of the accused in a criminal case registered by the Central Bureau of Investigation (CBI) relating to the alleged malpractices in the All India Post Graduate Medical Entrance Examination, the first respondent cancelled the selection of the petitioner, for admission to the Post Graduate Medical Course, by a memorandum dated 2.6.2006. Challenging the said order cancelling his admission to the Post Graduate Course, the petitioner has filed the present writ petition.

3. I have heard Mr.Vijay Narayan, learned senior counsel appearing for the petitioner and Mr.V.T.Gopalan, learned Additional Solicitor General appearing for the first respondent, Mr.N.Chandrasekaran, learned counsel appearing for the second respondent and Mr.Pa.Kadhirvel, learned Government Advocate appearing for the third and fourth respondents.

4. Before getting into the factual dispute involved in the case, it is necessary to set out a prelude, for a better appreciation of the issues raised in the case.

5. A complaint dated 1.3.2006 was lodged by the Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi, with the Director of the Central Bureau of Investigation, alleging large scale malpractices in the All India Post Graduate Medical Entrance Examination 2006, held on 8.1.2006. The basis of the complaint was that out of the first hundred qualified candidates, 37 were selected from the Chennai Centre, which was considered to be abnormal. Therefore, a preliminary enquiry was conducted by the CBI, on the basis of the findings of which, a regular case RC No.16(A)/06 was registered in the Anti Corruption Branch, CBI, Chennai against 22 doctors. The FIR was registered on 27.3.2006 by Anti Corruption Branch, CBI Chennai for alleged offences under Section 120-B r/w Section 420 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act.

6. In the course of the investigation, nine more persons were roped in by the CBI as being instrumental in organising the crime and fourteen more persons were identified as beneficiaries. The petitioner was roped in as Accused No.41, as one of the beneficiaries, in the course of the investigation, though his name did not find a place in the FIR.

7. In the meantime, on the basis of the allegations of malpractices and the complaint lodged with the CBI, the entire entrance examination was sought to be cancelled. Therefore, a few selected candidates moved the Supreme Court under Article 32 of the Constitution in W.P.(Civil) No.157 of 2006. On 3.4.2006, the Supreme Court appears to have directed the Government to file a status report. Accordingly, a status report was filed on 13.4.2006. Taking note of the contents of the status report, the Supreme Court passed the following order on 13.4.2006:-

"Pursuant to our order passed on 3rd April 2006, learned Additional Solicitor General has filed a status report regarding the conduct of All India Entrance Examination of MDS and MD/MS. In this report it is submitted that as regards MDS Entrance Examination, no mal-practice has been detected or has been committed by any of the candidates. In the MD/MS examination in the Centre at Chennai, out of 421 candidates who have passed the Entrance Examination, 20 candidates have been disqualified in the examination on the basis of the re-evaluation of the answer sheets. The authorities intend to disqualify them and to pass orders regarding appropriate punitive action. These twenty candidates shall not be allowed to participate in the ensuing counselling. As the twenty candidates are to be excluded from the merit list, the candidates who are next below in the order of merit shall occupy the place which has fallen vacant and the list shall accordingly be re-arranged.

As regards the counselling of MDS is concerned, the same shall start on 21st April 2006 and rest of the schedule shall be determined by the Medical Council of India in consultation with the other Authorities. Learned Additional Solicitor General also mentioned that in case any material is found against any other candidates, then further steps would be taken against them, including disqualification. This would apply to all candidates who have passed the Entrance Examination.

We have also perused the report submitted by the Central Bureau of Investigation."

8. Therefore, after the petitioner was roped in as Accused No.41 by the CBI, the first respondent cancelled the selection and admission of the petitioner by the impugned order dated 2.6.2006. Challenging the said order, the petitioner has filed the present writ petition and the writ petition was admitted on 13.6.2006 and an interim order was also granted, enabling the petitioner to continue to attend the classes.

9. However, the said interim order was vacated by an order dated 30.6.2006. Aggrieved by the vacation of the stay order, the petitioner filed a special Leave Petition before the Supreme Court in SLP (c) No.11075 of 2006. On 11.7.2006, the Supreme Court directed the SLP to be listed on 24.7.2006 and also granted an interim stay as regards filling up of the vacant seats till then. But by then, the first respondent filled up the vacancy created consequent upon the cancellation of the admission of the petitioner. It is relevant to point out here that the interim order granted in the present writ petition was vacated on 30.6.2006 by this Court and after hectic parleys between the first respondent (at Delhi) and the respondents 3 and 4 (at Chennai), the seat was allotted to another candidate and that candidate also joined the course on the same day, within a matter of few minutes. I am unable to categorise the speed with which the respondents 1,3 and 4 acted in filling up the seat, within a few minutes of the stay order getting vacated either as administrative efficiency at its best or as hastiness at its worst.

10. Be that as it may, the Special Leave Petition SLP (c) No.11075 of 2006 filed by the petitioner against the vacation of the interim order in the present writ petition, came up for hearing before the Supreme Court on 29.9.2006. By a short order, which reads as follows, the Supreme Court disposed of the Special Leave Petition:-

"We are not inclined to interfere with the impugned interim order. The writ petition is pending before the High Court. The petitioner is seeking admission to the Post Graduate Medical Course. In view of the urgency of the matter, we request the High Court to dispose of the matter

within a period of one month.

The Special Leave Petition is disposed of accordingly."

11. It is in pursuance of the aforesaid direction issued by the Honourable Supreme Court that the writ petition was posted for final hearing. The writ petition was heard for a few days and orders were reserved on 5.12.2006. Subsequently, it was brought to my notice that the CBI had filed a charge sheet before the Special Court and the petitioner herein is cited as Accused-37. It is in this background of facts that the writ petition is to be decided.

12. The only ground on which the impugned order of cancellation of admission of the petitioner to the Post Graduate Medical Course is assailed is that, it has been passed in violation of the principles of natural justice, without issuing any notice and without affording any opportunity of hearing to the petitioner. In other words, the contention of the petitioner is that the mere inclusion of his name in the FIR cannot automatically result in the cancellation of his admission to a Post Graduate Medical Course, even without any notice or enquiry by the first respondent. After having secured admission to the Post Graduate Medical Course and joined the course on 27.4.2006, the petitioner had acquired a valuable right and the same cannot be snatched away without following the principles of natural justice, after more than a month.

13. In support of the aforesaid contention that the impugned order is vitiated by failure to follow the principles of natural justice, Mr. Vijay Narayan, learned senior counsel appearing for the petitioner relied upon the following judgments of the Apex court and this Court:-

1. Hira Nath Mishra vs. Rajendra Medical College, Ranchi (AIR 1973 SC 1260).

2. T.C. Peter vs. The Union Public Service Commission by its Secretary, New Delhi (AIR 1978 MADRAS 87).

3. Board of Technical Education, U.P. vs. Dhanwantri Kumar (AIR 1991 SC 271).

4. Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi (JT 1991 (2) SC 296).

5. Biswa Ranjan Sahoo vs. Sushanta Kumar Dinda ((1996) 5 SCC 365)).

14. In defence, Mr. V.T. Gopalan, learned Additional Solicitor General contended -

(a) that no relief can be granted to the petitioner at this stage since the cut off date for admission of candidates as strictly stipulated by the Supreme Court had already expired and that no admission to any medical course can be made after the cut off date by any order of any Court in the country;

(b) that after the interim order was vacated in the present writ petition on 30.6.2006, the seat allotted to the petitioner was filled up by another candidate, making the writ petition infructuous;

(c) that the action taken against the petitioner was in pursuance of the order of the Supreme Court in W.P.(Civil) No.157 of 2006 dated 13.4.2006 and that therefore no opportunity need to precede the impugned order;

(d) that already 20 candidates had been disqualified even as per the status report submitted to the Supreme Court on 13.4.2006, and that those 20 candidates did not challenge the disqualification and that consequently the petitioner cannot be treated differently by retaining his admission to the Post Graduate Course.

15. At the outset, I am unable to accept the first two submissions of the learned Additional Solicitor General, viz., that no relief can be granted to the petitioner after the cut off date for admission and that the writ petition has become infructuous consequent upon the seat being allotted to another candidate. It is true that the Supreme Court deprecated the practice of granting midstream admissions, in *Medical Council of India vs. Madhu Singh and Others* ((2002) 7 SCC 258)) and various other cases. But the proposition of law that there shall be no midstream admissions, is not applicable to the case on hand. The petitioner herein was selected for admission and was allotted to the third respondent-College by a communication of the first respondent dated 21.4.2006 and he paid the necessary fees and joined the course on 27.4.2006. From 27.4.2006, the petitioner attended the classes in MS (General Surgery) till 30.6.2006, the date on which the interim order originally granted in his favour was vacated, by this Court. Therefore, this is not the case of a person seeking admission afresh to any Medical Course. This is the case of a person, who was already admitted to the Course in April 2006 and whose admission was sought to be cancelled by the order impugned in the writ petition. Hence, the first submission of the learned Additional Solicitor General is rejected.

16. Similarly, the second contention that the writ petition has become infructuous in view of the vacancy being filled up by another candidate, is to be stated only to be rejected. The interim order granted by this Court while admitting the writ petition on 13.6.2006 got vacated on 30.6.2006. It is stated by Mr.Vijay Narayan, learned senior counsel for the petitioner that the order vacating the interim stay was passed by the end of the day on 30.6.2006 and the respondents 1,3 and 4 filled up the vacancy in undue haste within a few minutes disguising the same as a legal necessity to fill up the seat before the cut off date. The Special

Leave Petition arising out of the said order vacating the interim stay, was disposed of by the Supreme Court only with a direction to this Court to dispose of the writ petition within a month. If the writ petition had actually become infructuous, as contended by the learned Additional Solicitor General, the Apex Court would not have directed this Court to dispose of the writ petition within a month. The respondents did not point out to the Supreme Court that the writ petition had already become infructuous and that there was no point in directing the High Court to dispose of the writ petition. The Apex Court was conscious of the vacation of the interim order and the filling up of the seat by the respondents 1,3 and 4. Yet, the Hon'ble Supreme Court remitted the matter back, in view of the fundamental principle of law that any interim order would be subject to the result of the final order. Therefore, the contention that the writ petition had become infructuous, goes against the fundamental principle of law relating to the grant or refusal to grant interim orders. Hence, the second submission of the learned Additional Solicitor General is also rejected.

17. The third submission of the learned Additional Solicitor General that the cancellation of the admission of the petitioner to the Post Graduate Medical Course was in pursuance of the order of the Supreme Court in W.P.(Civil) No.157 of 2006 and that therefore no opportunity of hearing need be given to the petitioner, is also fallacious. As seen from the order of the Supreme Court dated 13.4.2006, in W.P.(Civil) No.157 of 2006, extracted in para-7 above, the Supreme Court did not decide the question as to whether a person should be given an opportunity before his admission to the Medical Course was cancelled or not. The Apex Court merely recorded the submission of the learned Additional Solicitor General to the effect that "if in case any material is found against any other candidates, then further steps would be taken against them including disqualification". Thus what is contained in the order of the Supreme Court dated 13.4.2006 is only a submission of the learned Additional Solicitor General and not the dicta of the Supreme Court. Even if the same is taken to be an "obiter", all that the Supreme Court said in the order is that "further steps would be taken against them including disqualification". The words "further steps", would certainly include all steps which are required by law to be taken for disqualification. Therefore, there is no room for interpreting the order of the Supreme Court to be a fiat for the cancellation of admission of a candidate by the stroke of a pen. Hence, the third submission of the learned Additional Solicitor General is also rejected.

18. The fourth submission of the learned Additional Solicitor General that other 20 candidates disqualified for admission did not choose to challenge the action of the first respondent and that therefore, the petitioner cannot seek a different treatment, is also not correct. As seen from the order of the Supreme Court dated 13.4.2006, those 20 candidates were disqualified even at the beginning and they were not even allowed to take part in the counselling. They were merely candidates who were selected for admission and hence they had not acquired a vested right. As a person who was permitted to attend counselling, who was

given admission and permitted to join the course on 27.4.2006, the petitioner had acquired a vested right, in contra distinction to those 20 candidates who did not acquire any vested right since they could not even take part in the counselling. Therefore, the case of the petitioner is not comparable with the case of those 20 candidates, who were disqualified even before counselling and allotment to any particular college. The petitioner stands on a different footing than those 20 candidates and hence his right to challenge the cancellation of his admission, ordered after more than a month of the admission to the college, cannot be belittled. In any event, if a group of persons got affected by an administrative action, a person who is brave enough to challenge the action, cannot be non-suited merely on the ground that the others have accepted to suffer the injury inflicted upon them. Therefore, even the fourth submission of the learned Additional Solicitor General, is to be rejected.

19. Now coming to the only contention of the learned senior counsel appearing for the petitioner for assailing the impugned order, it is an admitted fact that the petitioner was not issued with any notice or opportunity of hearing before the admission granted to him was cancelled. The said contention of the learned senior counsel for the petitioner is based upon the requirement to follow the principles of natural justice when a vested right is sought to be taken away. But while advancing the said contention, the learned senior counsel for the petitioner fairly conceded that the extent to which the principles of natural justice would apply in matters relating to enforcement of discipline in Educational Institutions, would not be of a high degree as it would in matters relating to enforcement of discipline in employment. Even in the first decision of the Supreme Court relied upon by the learned senior counsel for the petitioner in Hira Nath Misra vs. Rajendra Medical College, Ranji (AIR 1973 SC 1260), the Supreme Court merely held that "the principles of natural justice are not inflexible and may differ in different circumstances".

20. In all the decisions cited by the learned senior counsel for the petitioner, the Courts were concerned with the extent to which the principles of natural justice would go in such matters. In Board of Technical Examination, U.P. vs. Thanashiri Kumar (AIR 1991 SC 271), the order of the High Court quashing a notice on the ground of vagueness was upheld by the Supreme Court. In Maharashtra State Board of Secondary and Higher Secondary Education vs. Gandhi (JT 1991 (2) SC 296), the Supreme Court upheld the enquiry report though it did not contain reasons, since the students had admitted to the charges. While dealing with such a non-speaking enquiry report, the Supreme Court held as follows:-

"The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the inquiry and the effect of the

order/decision on the rights of the person and attendant circumstances."

21. In a case arising out of the disqualification of a person who was alleged to have committed a mal practice in an examination, the Division Bench of this Court in T.C.Peter vs. Union Public Service Commission (AIR 1978 Madras 87) held that the principles of natural justice had to be followed. Therefore, it is to be seen as to whether the failure of the first respondent to issue a notice and follow the principles of natural justice vitiated the order of cancellation of admission of the petitioner to the Post Graduate Medical Course.

22. As seen from a catena of decisions of the supreme Court over the last five decades, the observance of the principles of natural justice has always been held to be the rule and its violation, approved in certain situations as an exception. Even while dealing with situations in which the principles of natural justice were violated, the Courts have made a distinction between "a total violation of natural justice" and "a mere violation of a facet of the rule". In simple terms, the Courts have divided the cases of violation of the principles of natural justice into two categories viz., (a) cases in which there was no opportunity/no notice/no hearing at all and (b) cases in which there was no adequate opportunity/no fair hearing. In cases where there was a total violation of natural justice and where there was no notice, no opportunity and no hearing, the Courts have held the end result to be undoubtedly invalid. But even while doing so, the Supreme Court has carved out an exception. The said exception is found in one case relating to the cancellation of an examination for selection to the Railways in Biswa Ranjan Sahoo and Sushanta Kumar Dinda ((1996) 5 SCC 365)). In the said case, the Central Administrative Tribunal, Cuttak Bench set aside the entire selection process, on the ground that there was large scale mal practice. While doing so, the selected candidates were not impleaded as parties and they were not given any opportunity. Therefore when the said selected candidates challenged the order of the Central Administrative Tribunal before the Supreme Court, on the ground of violation of the principles of natural justice, the Supreme Court held as follows:-

"3. A perusal thereof would indicate the enormity of malpractices in the selection process. The question, therefore, is: whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr.Santosh Hegde, the learned senior counsel appearing for the petitioners, that in the case of selection of an individual if his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become

fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the burnt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment."

23. In this case, though the name of the petitioner was not included in the FIR, he was implicated as accused 41 in the course of investigation. After the completion of investigation, the Central Bureau of Investigation has filed a final report before the Special Court implicating the petitioner as accused 37. The allegations relate to large scale mal practices. The manner in which the mal practice is alleged to have taken place shows a high tech deployment of skill. The offence is sought to be established only by circumstantial evidence and not by direct evidence. Therefore, a domestic tribunal may not really be well equipped to hold an enquiry into the commission of such an act of mal practice. Even if a notice had been issued and the opportunity given to the petitioner before ordering the cancellation of his admission to the Post Graduate Medical Course, it would have been difficult to conduct an enquiry without the same overlapping with the prosecution launched by the CBI before the Criminal Court. Therefore, I am unable to hold that the failure to follow the principles of natural justice vitiated the impugned order of cancellation of admission of the petitioner.

24. The learned senior counsel for the petitioner submitted that if the petitioner was ultimately acquitted by the Criminal Court, there is no method by which he could be compensated for losing the admission to the Post Graduate Medical Course that he had earned after shedding his sweat, blood and toil. Though I really have no answer to this question, it is well settled that hard cases cannot make bad law. Under normal circumstances, there would have been no difficulty in accepting the proposition that the admission to the Post Graduate Medical Course cannot be cancelled without following the principles of justice. But the situation on hand is an abnormal one. Principles of natural justice cannot come to the rescue of a person placed in such abnormal situations. Therefore, I am unable to grant any relief to the petitioner and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.
Svn.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Assistant Director General Medical Examination Cell
Directorate General of Health
Services,, Nirmal Bhavan,
New Delhi.
- 2.The Superintendent of Police
Central Bureau of Investigation,
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Chennai.

+2ccs to Ms. P. Suganthi, Advocate sr no. 3556

SGL (CO)
NM(20.01.07)

WP No.17265 of 2006

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